

Securities and Exchange Commission

§ 204.38

(b) The petition must fully identify and explain, with reasonable specificity, all the facts, evidence and witnesses, if any, that the employee believes support his or her position. The petition must be signed by the employee.

[58 FR 38520, July 19, 1993, as amended at 66 FR 54131, Oct. 26, 2001]

§ 204.36 Granting of a pre-offset hearing.

(a) If the employee timely requests a pre-offset hearing or the timeliness is waived, the program official must:

(1) arrange for a hearing official. If the hearing official is an administrative law judge, he or she shall be designated by the Chief Administrative Law Judge as set forth in 17 CFR 200.310(a)(2); and

(2) provide the hearing official with a copy of all records on which the determination of the debt and any involuntary repayment schedule are based.

(b) The hearing official shall notify the employee by personal service, by first class, registered or certified mail, or by a reliable commercial courier or overnight delivery service whether the employee is entitled to an oral or "paper" (*i.e.*, a review on the written record) hearing. (See 31 CFR 901.3(e).) Within 20 calendar days of receipt of this notice the employee shall provide the hearing official with a full description of all relevant facts, documentary evidence, and witnesses which the employee believes support his or her position. The hearing official may extend the time for the employee to respond to the notice for good cause shown.

(c) If an oral hearing is scheduled, the hearing official shall notify the program official and the employee in writing of the date, time and location of the hearing. The place for the hearing shall be fixed by the hearing official with due regard for the public interest and the convenience and necessity of the parties, the participants, or their representatives.

(d) If the employee is entitled to an oral hearing, but requests to have the hearing based only on the written submissions, the employee must notify the hearing official and the program official at least 3 calendar days before the date of the oral hearing. The hearing

official may waive the 3-day requirement for good cause.

(e) Failure of the employee to appear at the oral hearing may result in dismissal of the petition and affirmation of the program official's decision.

[58 FR 38520, July 19, 1993, as amended at 66 FR 54131, Oct. 26, 2001]

§ 204.37 Extensions of time.

The hearing official may for good cause or in the interests of justice postpone the commencement of the hearing, adjourn a convened hearing for a reasonable period of time or extend or shorten any other time limits prescribed under this section. This extension is not intended to abridge the 30 day initial notice or extend the 60 day decision requirement other than as provided for in 5 CFR 550.1104(d)(10).

§ 204.38 Pre-offset hearing.

(a) The hearing official shall determine the form and content of hearings granted under this section, pursuant to 31 CFR 901.3(e). All oral hearings shall be on the record. Except as otherwise ordered by the hearing official, hearings shall be recorded or transcribed verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to the discretion and approval of the hearing official, and a transcript thereof shall be made.

(b) Oral hearings are informal in nature. The Commission, represented by an attorney from the Office of General Counsel, and accompanied by a program official and the employee, and/or the employee's representative, orally shall explain their respective positions using relevant documentation. The employee may testify on his or her own behalf, subject to cross examination. Other witnesses may be called to testify where the hearing official determines the testimony to be relevant and not redundant. The Federal Rules of Evidence serve as a guideline, but are not controlling. The employee bears the burdens of proof and persuasion.

(c) The hearing official shall:

(1) Conduct a fair and impartial hearing;

(2) Preside over the course of the hearing, maintain decorum and avoid